

### **Applications under Section 303 of the Insolvency Act 1986**

Today a much awaited judgment was handed down in one of my long-standing High Court insolvency cases in Birmingham.

The outcome was a successful one for my client, the Trustee in Bankruptcy of the Estate of the Deceased. The Trustee was the Respondent.

The Applicant, the widow of the Deceased, made an application under Section 303 of the Insolvency Act 1986 and sought, *inter alia*, an order to set aside a settlement agreement entered into between the Trustee and the daughter of the Deceased surrounding the purported proprietary interest of the daughter in a property sitting in the Deceased's insolvent Estate.

The case is an interesting one for (a) re-affirming the threshold an applicant needs to reach in order for the Court, under Section 303 of the Insolvency Act 1986, to exercise its discretion to reverse any act or decision of the trustee, and (b) setting out what is required for an applicant (other than the bankrupt) to demonstrate standing to make an application in the first place.

Section 303 (1) of the Insolvency Act 1986 states that if a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the Court; and on such an application, the Court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks just.

The Applicant in this case brought the application as a purported creditor of the Deceased's insolvent Estate or a beneficiary of the Deceased's Estate pursuant to the terms of a will.

On the issue of standing, the Judge found that evidentially the Applicant's case did not get anywhere off the ground. The only evidence that was provided was a confusing proof of debt form. Argument surrounded whether the proof of debt form sufficed to make out standing. However the Judge, correctly in my view, held that a proof of debt

not adjudicated upon was not enough and that on the evidence the Applicant had not demonstrated she was a creditor on a balance of probabilities.

The Applicant then tried her hand at the '*any other person*' category for standing as a purported beneficiary. However no grant of probate had been issued or executor appointed such that the Deceased's Estate remained unadministered. Taking the Judge through my reasoning in this respect, it was therefore clear the Applicant was not yet a beneficiary and the person with any argument to standing was the personal representative of the Estate. This was also supported by the provisions of the Insolvency Administration Order which make clear that any surplus in the bankruptcy of a deceased's estate goes to the personal representative for distribution. The Applicant was not yet a beneficiary nor had she made any Part 64 CPR application to force the hands of a personal representative to make the Section 303 application.

As set out in *Brake v the Chedington Court Estate* [2023] 1 WLR 3035 at [99], outside the category of bankrupt and creditor, other persons have standing to make an application only in respect of matters *directly affecting their rights or interests*. Given the above, the Applicant had no such direct rights or interests in the bankruptcy. A personal representative might do so.

Fundamentally, on the substantive application, the Judge confirmed the very high threshold test to be applied to set aside the decision of a trustee in bankruptcy. An applicant is required to prove a trustee was acting in a manner which no reasonable trustee would act. The question is whether the trustee acted perversely or in bad faith. In this case the trustee, properly advised, had taken time to negotiate an outcome. There was simply no evidence that went anywhere near meeting the aforementioned threshold. In fact the trustee had done nothing wrong.

This case is therefore a reminder to take care when considering making a Section 303 application. Not only must standing be properly evidenced on a balance of probabilities but the Section 303 jurisdiction is clearly reserved for the most blatant and clear cut failings of a trustee. It would appear nothing less will really suffice.

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